IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.4672 OF 2005

Shreyas Prabhakar Rajapurkar ...Applicant
vs.
The State of Maharashtra ...Respondent

Mr.A.S.Khan & Associates with Mr.J.P.Shah and Mr.Manish Bohra for the Applicant
Ms Rajeshree Gadhvi,A.P.P. for State

CORAM: A.S.OKA,J.
DATE OF HEARING OF THE LAST ARGUMENTS: AUGUST 4,2005
DATE OF PRONOUNCEMENT OF THE JUDGMENT : AUGUST 17,2005

JUDGMENT:

1. Heard Advocate for the Applicant and the learned A.P.P. for State. An application made by the Applicant for grant of bail has been allowed by the learned Sessions Judge, Mumbai. The applicant who is accused No.4 is ordered to be enlarged on bail on bond of Rs.50,000/- with a surety or cash in the like amount on the condition that he deposits cash amount of Rs.5,54,122/- with the Registrar of the Sessions Court. The Applicant was directed to give an undertaking to the effect that whatever amount he receives in future under the scheme from the other investors, he would deposit the same with the Investigating Agency.

2. The learned Advocate appearing for the Applicant submitted that condition for depositing the cash amount could not have been imposed by the learned Additional Sessions Judge as under section 437 read with Section 439 of the Code of Criminal

Procedure, 1973, he has no power to impose such an onerous condition. He submitted that the direction given by the learned Judge to the Applicant to give undertaking could not have been given while deciding the bail application filed by the Applicant.

3. The learned A.P.P. submitted that the learned Additional Sessions Judge has power to impose such condition of depositing the amount. The learned A.P.P. submitted that the direction given by the learned Judge to the Applicant to file undertaking is also a condition imposed for grant of bail. The learned A.P.P. submitted that a similar order in case of co-accused has been confirmed by this Court and therefore, no interference is called for in the said condition.

4. I have considered the submissions. The offence registered against the Applicant and co-accused is under Sections 406, 420 and 34 of I.P.C. read with Section 3 and 4 of the Maharashtra Protection of Interests of Depositors Act (hereinafater referred to as M.P.I.D. Act). It appears the a submission was made before the learned Additional Sessions Judge on behalf of the State that the Applicant has received returns from Pinnacle Education and Opportunities (P) Ltd. to the extent of Rs.5,54,122/-. It appears from the order that the learned A.P.P. who appeared before the Sessions Court stated that the State had no objection for grant of bail if

the Applicant deposits a sum of Rs.5,54,122/-.

5. Under section 439 read with Section 437 of the Code of Criminal Procedure, 1973 the Sessions Judge or the High Court is empowered to impose appropriate conditions for grant of bail. On plain reading of Section 439 of the said Code of 1973 the first submission of the learned Counsel for the Applicant cannot be accepted.

6. The learned A.P.P. could not show me any material as to how the figure of Rs.5,54,122/- has been arrived at by the learned Sessions Judge. It appears that the learned Sessions Judge incorporated the said figure only on the basis of report of the Investigating Officer. From the material shown to me it prima facie appears that the total amount collected by the Applicant from the said Company appears to be less than Rs.5,54,000/-. Considering the nature of the offence alleged, the learned Judge was justified in imposing the condition regarding deposit of reasonable amount. However, there is no basis for fixing the amount of Rs.5,54,122/-.

7. As far as the direction given to the Applicant to submit undertaking is concerned, on plain reading of the order of the learned Judge it appears that the said direction is not given as a condition for grant of bail. The only condition imposed for grant of bail is the deposit of the amount and direction

to furnish the bond. The order regarding submitting undertaking appears to be an independent direction issued while disposing of the application. In my view, while disposing of the application for bail such drastic direction could not have been independently given by the learned Judge.

8. It is contended by the learned A.P.P. that a similar order passed in favour of the co-accused has been confirmed by this Court. However, it appears that the Advocate for the said co-accused agreed to deposit reasonable amount as a condition for grant of bail and also agreed to give undertaking and that is the reason why the order came to be passed by this Court.

9. In view of the observations which are made above, it is desirable that the Application for bail is considered afresh by the concerned Additional Sessions Judge.

10. Hence I pass the following order :

i) The order passed by the learned Sessions Judge in Bail Application No.28 of 2005 in R.A.No.12 of 2005 is quashed and set aside. The learned Judge will decide the Bail Application No.28 of 2005 afresh in the light of the observations made in this order.

JUDGE